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10  
11

12 THE HONORABLE SALVADOR MENDOZA, JR.

13 IN THE UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF WASHINGTON  
15

16  
17 SPOKANE RIVERKEEPER,  
18 Plaintiff,

19 v.  
20

21 TOWN OF SPANGLE,  
22 Defendant.  
23

No. 2:21-cv-00275

**SECOND AMENDED JOINT  
STATUS REPORT AND  
DISCOVERY PLAN**

24  
25 Pursuant to this Court's Text Only Order dated August 30, 2022, ECF No.  
26 17, and the Federal Rule of Civil Procedure 26(f) and Eastern District of  
27 Washington Local Rules 16.1(a) and 26.1, the parties submit this joint status  
28 report and discovery plan for consideration by the Court in preparation for the  
29 scheduling conference set for March 23, 2023. The parties have conferred and  
30  
31  
32

1  
2 agreed on this report.

3 **a) Magistrate Judge:**  
4

5 Parties have notified the Clerk's Office if they consent to the case being  
6 heard by a full-time U.S. Magistrate Judge.  
7

8 **b) Jurisdiction & Venue:**  
9

10 The Court has subject matter jurisdiction over Spokane Riverkeeper's  
11 claims under Section 505(a) of the CWA, 33 U.S.C. § 1365(a). The relief  
12 requested herein is authorized by Sections 309(d) and 505(a) and (d) of the  
13 CWA, 33 U.S.C. §§ 1319(d) and 1365(a) and (d).  
14

15 Under Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A),  
16 Spokane Riverkeeper notified Spangle of its violations of the CWA and of  
17 Spokane Riverkeeper's intent to sue under the CWA by letter dated and  
18 postmarked June 30, 2021 and delivered July 6, 2021 ("Notice Letter"). In  
19 accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A)  
20 and 40 C.F.R. § 135.2(a)(1), Spokane Riverkeeper notified the Administrator of  
21 the United States Environmental Protection Agency ("EPA"), the Administrator  
22 of EPA Region 10, and the Director of the Washington Department of Ecology  
23 ("Ecology") of its intent to sue Spangle by mailing copies of the Notice Letter  
24 to these officials on June 30, 2021. Spangle responded to this Notice Letter on  
25 September 7, 2021, through their prior attorney, Steve Jolley.  
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1  
2 At the time of filing the Complaint, more than sixty days had passed since  
3 the Notice Letter and copies thereof were issued in the manner described in the  
4 preceding paragraph.  
5

6 At the time of the filing of the Complaint, neither the EPA nor the Ecology  
7 had commenced any action constituting diligent prosecution to redress the  
8 violations alleged in the Notice Letter.  
9  
10

11 The source of the violations complained of is located in Spokane County,  
12 Washington, within the Eastern District of Washington, and venue is therefore  
13 appropriate in the Eastern District of Washington pursuant to Section 505(c)(1)  
14 of the CWA, 33 U.S.C. § 1365(c)(1), and 28 U.S.C. § 1391(b).  
15  
16

17 **c) Service of Process:**  
18

19 Defendant waived service on December 7, 2021.  
20

21 **d) Description of the claims and defenses:**  
22

23 This action involves claims brought under the citizen suit provisions of the  
24 Clean Water Act (“CWA”), 33 U.S.C. § 1365. Under the CWA, Plaintiff, an  
25 environmental organization, alleges that Defendant, a town operating a  
26 wastewater treatment plant in Spangle, is in violation of the conditions of its  
27 National Pollutant Discharge Elimination System (“NPDES”) permit (“the  
28 Permit”) authorizing discharges of wastewater and other pollutants from its  
29 facility into Spangle Creek. Plaintiff seeks declaratory and injunctive relief, the  
30  
31  
32

1  
2 imposition of civil penalties, and recovery of litigation expenses. Defendant  
3 denies Plaintiff's allegations.  
4

5 **e) Constitutionality:**

6 A statute's constitutionality is not being challenged in this matter.  
7

8 **f) Class Action:**

9 This matter is not a class action.  
10

11 **g) Issues to certify to the State Supreme Court:**

12 None.  
13

14 **h) Suggested deadlines for amending the pleadings:**

15 The parties propose that this matter be held in abeyance without  
16 establishing deadlines, and that a status conference be held after September 1,  
17 2023, to allow Ecology time to provide funding for the further study of the  
18 Town's sewer system and allow the parties to stipulate to a resolution of this  
19 matter without incurring unnecessary attorneys' fees and wasting judicial  
20 resources.  
21  
22  
23  
24

25 **i) Suggested deadline for adding additional parties:**

26 See paragraph h above.  
27

28 **Corporate disclosure statement:** Per Federal Rule of Civil Procedure 7.1,  
29 the Town of Spangle is a governmental entity and therefore is not required to  
30 file a corporate disclosure statement.  
31  
32

1  
2 **j) Minor or incompetent party – GAL necessary:**

3 This case does not involve a minor or an incompetent party, thus,  
4  
5 appointment of a GAL is not necessary.

6 **k) Discovery:**

7  
8 **1. Deadline for initial disclosures:**

9 Parties have already timely submitted initial disclosures and filed their  
10  
11 Notices of Compliance, ECF document nos. 12 and 14.

12  
13 **2. Subjects on which discovery may be needed:**

14 The subjects on which discovery may be needed include Plaintiff's  
15  
16 standing, Defendant's compliance/noncompliance with the Permit, means to  
17  
18 control wastewater pollution at Defendant's facility, the application of the  
19  
20 penalty factors identified at 33 U.S.C. § 1319(d), and any affirmative defenses  
21  
22 raised by Defendant. Plaintiff may request entry onto the site to take samples of  
23  
24 Defendant's wastewater discharges.

25  
26 **3. Issues about preserving discoverable information:**

27 At this time, there are no known issues about preserving discoverable  
28  
29 information.

30  
31 **4. Claims of privilege or protection:**

32 The parties are not currently aware of any unique or extensive claims or  
privilege or protection.

1  
2  
3 **5. Proposed modifications to standard discovery procedures:**  
4

5 This case will involve preservation and production of ESI. The parties  
6 may propose an agreement based on the Model Protocol for Discovery of ESI if  
7 the parties conclude such an order is necessary. At this time, there are no known  
8 issues related to the disclosure or discovery of ESI. The Parties do not  
9 anticipate a need for bifurcation and/or consolidation at this point.  
10

11  
12 **6. Suggested expert disclosure deadlines:**  
13

14 See paragraph h above.  
15

16 **7. Suggested discovery cut-off:**  
17

18 See paragraph h above.  
19

20 **8. Fed. R. Evid 502 agreements relating to inadvertent disclosures:**  
21

22 The parties will address as needed; at this time the parties do not anticipate  
23 any Fed R. Evid. 502 agreements relating to inadvertent disclosures.  
24

25 **l) Proposed protective orders/confidentiality agreements:**  
26

27 The parties will address if discovery requires a protective order. At this  
28 time, the parties are not proposing any protective orders or confidentiality  
29 agreements.  
30

31 **m) Anticipated motions and suggested dispositive motion filing deadline:**  
32

See paragraph h above.

1  
2 **n) Trial:**

3 1. **Suggested trial date:** The parties believe this case will be ready for trial  
4  
5 September 1, 2024.

6 2. **Length of trial:** The parties anticipate that five (5) trial days will be  
7  
8 needed.

9 3. **Bifurcation:** The parties do not anticipate a need for bifurcation at this  
10  
11 time but reserve the right to seek bifurcation at a later date, if appropriate.

12 4. **Need for special audio/visual courtroom technology:** At this time, the  
13  
14 parties do not anticipate the need for special audio/visual courtroom technology.

15  
16 **o) Mediation:**

17 1. **Deadline for referral to magistrate judge:**

18  
19 The deadline for consent to referral to a magistrate judge has already  
20  
21 passed in this matter, and it will remain with a district judge.

22 2. **Efforts parties have made toward settlement:**

23  
24 To promote the expeditious and inexpensive resolution of the case, the  
25  
26 parties agree to work cooperatively and have already informally exchanged  
27  
28 information. The parties have already had several phone conversations about  
29  
30 the issues in this matter and potential resolutions. Currently, the parties are  
31  
32 waiting further information on the Town sewer plan, which will help inform  
discussions of potential resolution of this matter.

1  
2  
3 **3. Barriers to productive mediation that exist at this time:**  
4

5 At this time, the parties do not know of any barriers to productive  
6 mediation.  
7

8 **p) Any other matters that may be conducive to the just, efficient, and**  
9 **economical determination of this action:**  
10

11 The parties do not have any further suggestions.  
12

13  
14 DATED this 9<sup>th</sup> day of March 2023.

15 ETTER, MCMAHON, LAMBERSON,  
16 VAN WEST & ORESKOVICH P.C.  
17

18  
19 /s/ Michael F. Connelly

20 Michael F. Connelly, WSBA #12448  
21 Attorney for Town of Spangle  
22

23 SMITH & LOWNEY, PLLC  
24

25  
26 /s/ Savannah Rose

27 Richard A. Smith, WSBA #21788  
28 Savannah Rose, WSBA #57062  
29 Smith and Lowney, PLLC  
30 2317 E John St  
31 Seattle, WA 98112-5412  
32 Attorneys for Spokane Riverkeeper



**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of March, 2023, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF System, which will send notification of such to all attorneys of record.

/s/ Bonita L. Felgenhauer

Bonita L. Felgenhauer